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13 *Attorneys for Alleged Debtor, South Edge, LLC*

14 **UNITED STATES BANKRUPTCY COURT**
14 **DISTRICT OF NEVADA**

15 In re:

16 SOUTH EDGE, LLC,

17 Alleged Debtor.

Case No. 10-32968-bam

Chapter 11 (Involuntary)

ANSWER OF ALLEGED DEBTOR
CONTESTING THE INVOLUNTARY
CHAPTER 11 PETITION

Evidentiary Hearings

Hearing Dates: January 24, January 26, February
2, February 3 & February 4, 2011

Hearing Time: 9:30 a.m. (each day)

1 South Edge, LLC, the alleged debtor in the above-captioned chapter 11 case (“South Edge”),
 2 hereby answers the involuntary chapter 11 petition (the “Involuntary Petition” [ECF No. 1]) filed
 3 against it as follows:¹

4 1. South Edge denies the allegations contained in paragraph 1. of the portion of the
 5 Involuntary Petition headed “Allegations.”

6 2. South Edge neither admits nor denies the allegations contained in paragraph 2. of the
 7 portion of the Involuntary Petition headed “Allegations” because such allegations call for a legal
 8 conclusion.

9 3. South Edge denies the allegations contained in paragraph 3.a. of the portion of the
 10 Involuntary Petition headed “Allegations.”

11 4. South Edge denies all the allegations contained in any other portion of the
 12 Involuntary Petition to which a response may be required.

FIRST AFFIRMATIVE DEFENSE

14 5. Without in any way shifting the burden of production, proof, or persuasion, pursuant
 15 to Bankruptcy Code section 303(b)(1), the petitioning creditors are ineligible to file the Involuntary
 16 Petition because (i) South Edge has 12 or more creditors, and the petitioning creditors do not
 17 constitute entities holding three separate claims against South Edge; (ii) the petitioning creditors are
 18 not undersecured creditors; and (iii) some or all of the petitioning creditors’ claims are subject to a
 19 bona fide dispute as to liability or amount. Attached hereto as Exhibit “A” is the list of all South
 20 Edge creditors required by Federal Rule of Bankruptcy Procedure 1003(b).

SECOND AFFIRMATIVE DEFENSE

22 6. Without in any way shifting the burden of production, proof, or persuasion, pursuant
 23 to Bankruptcy Code section 303(h)(1), no order of relief can be entered against South Edge because
 24 South Edge is generally paying its debts (except debts that are the subject of a bona fide dispute as to
 25 liability or amount) as such debts become due.

27 1 South Edge expressly reserves its rights to argue that the Court should dismiss the Involuntary Petition
 28 based upon, *inter alia*, the petitioning creditors’ bad faith, or, in the alternative, that the Court should
 dismiss the Involuntary Petition pursuant to Bankruptcy Code section 305(a)(1). Toward that end, on or
 before January 6, 2011 at 5:00 p.m., South Edge will file a motion requesting such relief.

1 **THIRD AFFIRMATIVE DEFENSE**

2 7. The petitioning creditors lack standing to file the Involuntary Petition under section
3 10.08(a) of that certain *Amended and Restated Credit Agreement* dated as of March 9, 2007.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 8. Pursuant to Bankruptcy Code sections 105(a) and 303, this involuntary case should be
6 dismissed for cause, including, but not limited to, the petitioning creditors' bad faith in filing the
7 Involuntary Petition, the petitioning creditors' attempted abuse of the bankruptcy process, and the
8 petitioning creditors' unclean hands.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 9. Pursuant to Bankruptcy Code section 305(a)(1), the interests of creditors and South
11 Edge would be better served by a dismissal of this involuntary case.

12
13 **WHEREFORE**, South Edge respectfully requests that the Court dismiss the Involuntary
14 Petition, schedule a hearing to determine the amount of damages to be paid to South Edge by the
15 petitioning creditors pursuant to Bankruptcy Code section 303(i),² and grant South Edge such other
16 and further relief as the Court deems just and appropriate.

17
18 Dated: January 4, 2011

THE SCHWARTZ LAW FIRM, INC.

19 and

20 KLEE, TUCHIN, BOGDANOFF & STERN LLP

21 By: _____

DAVID M. STERN
MARTIN R. BARASH
MATTHEW C. HEYN
WHITMAN L. HOLT

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23 Attorneys for Alleged Debtor, South Edge, LLC

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25
26
27 2 South Edge expressly reserves all its rights in the event that the Court dismisses the Involuntary Petition,
28 including, but not limited to, its rights to judgment under Bankruptcy Code section 303(i).

Exhibit “A”

CREDITORS OF SOUTH EDGE, LLC AS OF DECEMBER 9, 2010

<u>Creditor & Address</u>	<u>Nature of Claim</u>	<u>Amount of Claim³</u>
HUB International Insurance 6701 West Center Drive Suite 1500 Los Angeles, CA 90045	Premiums for construction bonds	\$73,040.00
NV Energy 6226 West Sahara Avenue Las Vegas, NV 89146	Electricity bill	\$160.19
Republic Services 770 E. Sahara Avenue Las Vegas, NV 89193	Trash disposal services	\$34.52
City of Henderson 240 Water Street, 4th Floor Henderson, NV 89015	Water bill	\$206.66
Inspirada Community Association 2000 Via Firenze Henderson, NV 89044	Home owner association fees	\$18,031.64
Philadelphia Insurance Companies 7251 West Lake Mead Blvd. Suite 369 Las Vegas, NV 89128	Premiums for general liability insurance	\$4,209.00
Western Sign & Flag 4181 West Oquendo Road Las Vegas, NV 89118	Advertising expenses	\$5,285.00
Securitas Security Services 4495 South Pecos Road Las Vegas, NV 89121	Security services	\$6,053.30

³ Amounts listed are as of December 9, 2010, the date on which the involuntary petition was filed. South Edge reserves its rights to later dispute the amounts listed based on facts that become available to it. Moreover, certain claims may have been satisfied or resolved following the December 9, 2010 petition date.

<u>Creditor & Address</u>	<u>Nature of Claim</u>	<u>Amount of Claim³</u>
JAMS, Inc. 2300 W. Sahara Ave. Suite 900 Las Vegas, NV 89102	Mediation services in connection with the ongoing dispute with C&S Company, Inc.	\$20,262.30
Evercore Group L.L.C. 55 East 52 Street New York, NY 10055	Financial restructuring services	\$200,996.40
Kaye Scholer LLP 1999 Avenue of the Stars Suite 1700 Los Angeles, CA 90067	Legal services	\$15,401.62
Holland & Hart LLP 3800 Howard Hughes Pkwy. 10th Floor Las Vegas, NV 89169	Legal services in connection with C&S mediation	\$32,335.32
Kaempfer Crowell Renshaw Gronauer & Fiorentino 8345 W. Sunset Road Suite 250 Las Vegas, NV 89113	Legal services in connection with C&S mediation	Disputed as to amount
C&S Company, Inc. c/o Shumway Van & Hansen 8985 S. Eastern Ave., # 100 Las Vegas, NV 89123 Attn: Michael C. Van, Esq.	Disputed claim for excavation work and amounts allegedly due under construction contract	Disputed as to amount
J.P. Morgan Chase Bank, N.A., as Administrative Agent under the <i>Amended and Restated Credit Agreement</i> dated March 9, 2007 c/o Morrison & Foerster LLP 1290 Avenue of the Americas New York, NY 10104 Attn: James E. Hough, Esq.	Secured bank debt	Approximately \$360 million

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CERTIFICATE OF SERVICE

1. On January 4, 2011, I served the foregoing pleading, by the following means, to the persons as listed below:

(Check all that apply)

- a. ECF System (*You must attach the “Notice of Electronic Filing”, or list all persons and addresses and attach additional paper if necessary*)

[SEE ATTACHED NEF SERVICE LIST]

- b. United States mail, postage fully prepaid
(List persons and addresses. Attach additional paper if necessary)

[SEE ATTACHED U.S. MAIL SERVICE LIST]

- c. Personal Service (*List persons and addresses. Attach additional paper if necessary*)

I personally delivered the document(s) to the persons at these addresses:

For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the documents(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the documents(s) in a conspicuous place in the office.

For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

- d. By direct email (as opposed to through the ECF System)
(List persons and email addresses. Attach additional paper if necessary)

I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

e. By fax transmission (*List persons and fax numbers. Attach additional paper if necessary*)

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

f. By messenger (*List persons and addresses. Attach additional paper if necessary*)

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service. (A declaration by the messenger must be attached to this Certificate of Service).

I declare under penalty of perjury that the foregoing is true and correct.

Signed on (date): January 4, 2011 at Los Angeles, California.

Rosalind Williams
(NAME OF DECLARANT)

/s/ Rosalind Williams
(SIGNATURE OF DECLARANT)

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